SEX-SLAVERY IN ISLAM, AS PER TWELVER-SHIA (ITHNA-ASHAARIYA/IMAAMIYA) SOURCES

Disclaimer: Just because someone identifies himself/herself as a Twelver Shia Muslim or is identified as one, doesn't necessarily mean he/she is aware of the following, let alone him/her being in agreement or in support of it.

Notes:

1. Certain things are needed to be taken into consideration about a source book, A Digest Of Mohummudan Law, According to the Tenets of the Twelve Imams, Compiled, Under the Superintendence of the Late Sir William Jones: Extended, So as to Comprize the Whole of the Imameea Code of Jurisprudence, in Temporal Matters, and Translated, from the Original Arabic, by Order of the Supreme Government of Bengal ; with Notes, Illustrative of the Decisions of Other Sects of Mohummudan Lawyers, on Many Leading and Important Questions, By Captain John Baillie, Printed at the Honorable Company's Press, Calcutta, MDCCCV (1805)
https://archive.org/details/dli.csl.7654/mode/1up

- This is the first part of the second volume of a book which is among the four most frequently relied upon Islamic law books in the courts of Pakistan[n1].

- It is compiled from the Twelver Shias' jurisprudential works, chiefly, Sharai al-Islam of al-Hilli and the Tahrir al-Ahkam of Ibn al-Mutahhar[n2]. Full name of al-Hilli (d. 1277 CE), the author of Sharai al-Islam, is Najm al-Din Abul-Qasim Jafar ibn Hasan al-Hilli, also referred as al-Muhaqiq al-Ḥilli[n3]. Full name of Ibn al-Mutahhar (1250 to 1325-6CE), the author of Tahrir al-Ahkam, is Jamal al-Din Hasan ibn Yusuf ibn Ali ibn Mutahhar Hilli, also referred as Allama Hilli[n4]. In the source under consideration, Ibn al-Mutahhar is referred as Jumal-Ood-Deen, and also as Allama Hillee. His book, Tahrir al-Ahkam is referred as Tuhreer al-Ahkam, and also just as Tuhreer (See page 33 & 481).

- About al-Muhaqqiq al-Hilli & Allama Hilli:

The most active centre of the Twelver Shia scholarship in the 13th century was the school of Hilla in Iraq under the leadership of al-Muhaqqiq al-Hilli and Allama Hilli. These two scholars steered the development of the Twelver Shia law in the direction which was later to prevail universilly. On account of al-Allama’s significant contribution, he was granted, for the first time in the Shia history, the title of Ayatullah (Allah's sign)[n5]. His legal works are often referred to as authorities of undisputed merit. Among them, Tahrir al-Ahkam is a justly celebrated work[n6]. Similarly, Al-Muhaqqi's Sharai al-Islam is

one of the most influential work of Twelver Shia jurisprudence which still continues to serve practical needs and hence is an essential text in Twelver Shia curriculum[n7].

- In the source under consideration, long 's' which looks like the letter 'f' is used for the letter 's'. Its use has some rules which the reader may read here - https://library.csun.edu/SCA/Peek-in-the-Stacks/esses

- In the following post, the source under consideration will be referred as "A Digest Of Mohummudan Law, According to the Tenets of the Twelve Imams", for the sake of brevity.

2. On the basis of general Quranic verses, like 9:5, 9:29, 9:36, 9:123, etc., war is waged against the non-Muslims, either to convert them to Islam or to make them pay the Jizyah[n8]. As far as the matter of enslaving the war-captives is concerned, only non-Muslim war-captives could be enslaved[n9]. Though the sufficient cause of the enslavement of the non-Muslim war-captives happens to be their infidelity only, but just the acquirement of the status of a Muslim after being captured, doesn't absolves the captive of the status of a slave[n10]. Like, if a non-Muslim child gets captured without any of the non-Muslim parents, then the child would be considered to be a Muslim[n11] but that child still could be bought and sold as a slave[n12].

Finding:

Other than his four[1] wives, a male Muslim may indulge in sexual activity with his unlimited[2] Right-Hand-Possessions (Milk-al-Yamin/ female slaves)[3]. Such sexual act doesn't fall under the category of Zina[4], rather, making "not taking any mistress in the future ever", one of the conditions of a marriage contract is considered to be in contradiction with the Sharia[5]. Prophet (first of the fourteen infallibles) himself had established sexual relationship with his female slave, Mariyah[6]. In Quran 33:50, Allah has allowed the Prophet to establish sexual relationship with his female slaves. Similarly, an Imam could choose the prettiest female slave from the khums (one-fifth) of the spoils of war for himself[7].

Before indulging in sexual activity with the female slave, certain legal constraints are needed to be observed.

Governmental Constraint:

If the female is part of the the Anfal (spoils if war), it is required to seek the permission of the Imam before taking possession of her. In the absence of Imam, the Faqih (fully qualified and just Imami jurisprudent) represents the Imam[8].

Marital Constraint:

It is impermissible for the owner to copulate with his female slave if he marries her to a man (who is not his slave), unless such a man dies or the divorce takes place[9]. But if the owner marries her to his own male slave, then the owner can enforce a separation between them as per his will[10]. It has been narrated in the traditions explaining the beginning part of the Quran 4:24 that the master of a slave couple may take away the female from her husband, keep her untouched for some prescribed term, then have sexual relation with her, and thereafter return her to her husband[11].

If the married female is a war captive, then her marriage is considered to be annulled even if she gets captured along with her husband. After getting captured she acquires the status of a slave, as slavery of a female is materialized through her captivity[12]. Hence, thereby it becomes permissible to buy and sell her, and to use her for sex[13].

Bodily Constraint:

At the time of possession, if she is the one who experiences menstruation, then it is required to delay having any kind of sexual activity (be it, kissing or touching with lust), till the lapse of one menstrual period[14]. But no such delay is required to be observed if she is too young or too old to menstruate[15].

Miscellaneous:

The nature and extent of authority which an owner happens to have over his female slave is such that if he pawns her to some man, giving him the permission of having sex with her, and the pawnee have sex with her even against her will, no legal repurcussion whatsoever would have to be faced by anyone[16].

[n1]

Genealogical Analysis of Islamic Law Books Relied on in the Courts of Pakistan/ Shahbaz Ahmad Cheema & Samee Ozair Khan, pub. in Al-ADWA, V 28, No.40, P 24-27 by Islamic Research Index - Allama Iqbal Open University, Islamabad.(http://iri.aiou.edu.pk/indexing/wp-content/uploads/2016/08/genealogical-analysis-of-islamic-law-books-relied.pdf)/ alternate link
https://archive.org/details/hed_20200712/page/24/mode/1up

[n2]

Catalogue Of Arabic Books In The British Museum By A. G. Ellis, Published by The Trustees Of The British Museum, first published 1894, reprint 1967, v1, p628
https://archive.org/details/catalogueofarabi01brit/page/n325/mode/1up

An Analytical Digest Of All The Reported Cases Decided In The Supreme Courts Of Judicature In India, in The Courts Of The Hon. East-India Company, By William H. Morley, London: W H. Allen And Co., MDCCI (1801), v1, Introduction cclxxix
https://archive.org/details/in.ernet.dli.2015.31977/page/n287/mode/1up

[n3]

Classical Islam, A source Book Of Religious Literature, Edited and translated by Norman Calder, Jawid Mojaddedi and Andrew Rippin, published by Routledge, London, 2005, p219
https://archive.org/details/91-ClassicalIslamASourcebookOfReligiousLiterature/page/n232/mode/1up

[n4]

Tuḥfah Yi- ‘Abbāsī: The Golden Chain of Sufism in Shī'ite Islam, by Shaykh Muhammad Ali Muadhdhin Sabzwārī Khurasani, Tr. Mohammad H. Faghfoory, University Press of America, 2008, P85 https://books.google.co.in/books?id=vDVQxRB-7xgC&pg=PA85&lpg=PA85&dq=%22near+the+tomb+of+master+of%22&source=bl&ots=9u52Ci3LDU&sig=ACfU3U1mNW1OlxrvkNvK27ip2qp7dO2_Xw&hl=en&sa=X&ved=2ahUKEwj9kKrUrrrwAhWVXSsKHdxJAAIQ6AEwAHoECAMQAg#v=onepage&q=%22near%20the%20tomb%20of%20master%20of%22&f=false

Classical Islam, A source Book Of Religious Literature, Edited and translated by Norman Calder, Jawid Mojaddedi and Andrew Rippin, published by Routledge, London, 2005, p166 https://archive.org/details/91-ClassicalIslamASourcebookOfReligiousLiterature/page/n179/mode/1up

The Oriental Biographical Dictionary, by Thomas William Beale, edited & published by The Asiatic Society Of Bengal, Calcutta, 1881, P41, 131-132 https://archive.org/details/orientalbiograp00benggoog/page/n53/mode/1up

[n5]

Shii Renaissance By Ali al-Oraibi, Institute of Islamic Studies, McGill University, Montreal, Canada, 1992, P2 https://archive.org/details/shii-renaissance-a-case-study-of-the-theosophical-school-of-bahrain-in-the-7th-13th-century/page/2/mode/1up

Shiism, By Heinz Halm, Tr. Janet Watson & Marian Hill, Edinburgh University Press, edn.2, 2004, p64 https://archive.org/details/shiism0000halm/page/64/mode/1up

[n6]

An Analytical Digest Of All The Reported Cases Decided In The Supreme Courts Of Judicature In India, in The Courts Of The Hon. East-India Company, By William H. Morley, London: W H. Allen And Co., MDCCI

(1801), v1, Introduction cclxxviii
https://archive.org/details/in.ernet.dli.2015.31977/page/n286/mode/1up

The Oriental Biographical Dictionary, by Thomas William Beale, edited & published by The Asiatic Society Of Bengal, Calcutta, 1881, P131-132
https://archive.org/details/orientalbiograp00benggoog/page/n143/mode/1up

Catalogue Raisonne Of The Buhar Library, volume 2, Catalogue Of The Arabic Manuscripts In The Buhar Library, By Shams-Ul-Ulama M. Hidayat Husain Khan Bahadur, Imperial Library, Calcutta, 1923, p99
https://archive.org/details/catalogueraisonn02calcuoft/page/99/mode/1up

Classical Islam, A source Book Of Religious Literature, Edited and translated by Norman Calder, Jawid Mojaddedi and Andrew Rippin, published by Routledge, London, 2005, p166
https://archive.org/details/91-ClassicalIslamASourcebookOfReligiousLiterature/page/n179/mode/1up

[n7]

Ibid. p219 https://archive.org/details/91-ClassicalIslamASourcebookOfReligiousLiterature/page/n232/mode/1up

Shiism, By Heinz Halm, Tr. Janet Watson & Marian Hill, Edinburgh University Press, edn.2, 2004, p64
https://archive.org/details/shiism0000halm/page/64/mode/1up

Shii Renaissance By Ali al-Oraibi, Institute of Islamic Studies, McGill University, Montreal, Canada, 1992, P2 https://archive.org/details/shii-renaissance-a-case-study-of-the-theosophical-school-of-bahrain-in-the-7th-13th-century/page/2/mode/1up

[n8]

Al-Mizan, An Exegesis Of The Holy Quran, By al-Allamah as-Sayyid Muhammad Husayn at-Tabatabai, Tr. Sayyid Saeed Akhtar Rizvi, World Organization For Islamic Services, Tehran, Iran, edn.1, 1982, V3, p82-94 (in this source, vesre 5 chapter 9 is misprinted as 9:6 instead of 9:5) https://archive.org/details/al-mizan-tabatabai-vols1-13/Vol%203%2C%20Al-Mizan/page/82/mode/1up

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p263-285 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

A Divine Perspective On Rights by Imam Sajjad Ali ibn al-Hussein, Commented by Ghodratullah Mashayekhi, Trs. Dr. Ali Peiravi/Lisa Zaynab Morgan, Ansariyan pub., Qum/Iran, 1st edn., 2002, p460-468 http://islamiclibrary.com/Scripts/BookReaderDemo/ViewPdf.aspx?cd=EN9#page/1/mode/2up

[n9]

Virtues of Ameerol Mominin Ali Ibn Abi Talib, by Abu Abdurrahman Ahmed Ibn Shuayb an-Nassaiy, Tr. A.K Ahmed & Abdullah al-Shahin, Ansariyan Publications, Qum, Islamic Republic of Iran, 2009, edn1, p142-146, The debate of Ibn Abbas with the Kharijites who denied Ali, tradition no.189 https://archive.org/details/Khasais_Ali_English_Imam_Nasai/page/n70/mode/2up

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p284-285 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[n10]

A Digest Of Mohummudan Law, According to the Tenets of the Twelve Imams, p129, Book l, Chapter IX, subject matter taken from Tahrir al-Ahkam of Allama Hilli https://archive.org/details/dli.csl.7654/page/n133/mode/1up

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p271-272 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[n11]

Ibid. P272 http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[n12]

A Digest Of Mohummudan Law, According to the Tenets of the Twelve Imams, p129, Book l, Chapter IX, subject matter taken from Tahrir al-Ahkam of Allama Hilli https://archive.org/details/dli.csl.7654/page/n133/mode/1up

[1]

Quran 4:3

[2]

Sharai Al-Islam Fi Masail al-Halal wal-Haram By Al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, Ansariyan pub., Qum, Islamic Republic Of Iran, edn 1, 2003, V2, p277 http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

[3]

Quran 23:1-7

Quran 70:29-30

Al-Mizan, An Exegesis Of The Holy Quran, By al-Allamah as-Sayyid Muhammad Husayn at-Tabatabai, Tr. Sayyid Saeed Akhtar Rizvi, World Organization For Islamic Services, Tehran, Iran, edn.1, 1992, V8, p89 https://archive.org/details/al-mizan-tabatabai-vols1-13/Vol%208%2C%20Al-Mizan/page/89/mode/1up

A Divine Perspective On Rights by Imam Sajjad Ali ibn al-Hussein, Commented by Ghodratullah Mashayekhi, Trs. Dr. Ali Peiravi/Lisa Zaynab Morgan, Ansariyan pub., Qum/Iran, 1st edn., 2002, p144 http://islamiclibrary.com/Scripts/BookReaderDemo/ViewPdf.aspx?cd=EN9#page/1/mode/2up

Sharai Al-Islam Fi Masail al-Halal wal-Haram By Al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, Ansariyan pub., Qum, Islamic Republic Of Iran, edn 1, 2003, V2, p222 http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

[4]

Imam Rouhollah Khomeini's Tahrir Al-Vasilah, Tr. DR. Sayyid Ali Reza Naqav, Institute for Compilation & Publication Of Imam Khomeini's (R.A.) Works, Tehran. (I.R.I.), 2011, v4, p185 https://archive.org/details/TahrirAlVasilah/0000-tahrir%20j4-nA4/page/n184/mode/1up

[5]

Sharai Al-Islam Fi Masail al-Halal wal-Haram By Al-Muhaqqiq al-Hilli (602-672 AH), Tr. Hasan M. Najafi, Ansariyan pub., Qum, Islamic Republic Of Iran, edn 1, 2003, V2, p294 http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

[6]

Al-Kafi, by Ash-Shaykh Abu Ja‘far Muhammad Ibn Ya‘qub Ibn Ishaq Al-kulaynl Ar-razi, volume1, al-Usul, part2, 4) The Book Of Divine Proof, (V), translated & published by World Organization For Islamic Services, Tehran, Iran, edn.3, 2011, P435 https://archive.org/details/Al-Kafi/10-Vol1-Divine%20Proof_5/page/n110/mode/1up

[7]

Al-Kafi, by Ash-Shaykh Abu Ja‘far Muhammad Ibn Ya‘qub Ibn Ishaq Al-kulaynl Ar-razi, volume1, al-Usul, part2, 4) The Book Of Divine Proof 2, (V), Tr. S.M. Hasan Rizvi & Yaha Cooper, World Organization For Islamic Services, Tehran, Iran, edn.1, 2007, Chapter 130, Concerning al-Fay and al-Anfal and the Explanation of al-Khums and its Limits and What is incumbent in it, p477 https://archive.org/details/Al-Kafi/17-Vol1-Kafi-17-Introduction/page/n90/mode/1up

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p168 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[8]

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p168-169 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[9]

Sharai Al-Islam Fi Masail al-Halal wal-Haram By Al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, Ansariyan pub., Qum, Islamic Republic Of Iran, edn 1, 2003, V2, p277-278 http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

[10]

Ibid. P276

[11]

Al-Mizan, An Exegesis Of The Holy Quran, By al-Allamah as-Sayyid Muhammad Husayn at-Tabatabai, Tr. Sayyid Saeed Akhtar Rizvi, World Organization For Islamic Services, Tehran, Iran, edn.1, 1992, V8, p94, 119-120 https://archive.org/details/al-mizan-tabatabai-vols1-13/Vol%208%2C%20Al-Mizan/page/94/mode/1up

[12]

Sharai al-Islam, Fi Masail al-Halal wal-Halal, By al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, v1, p271-272 (provided online by a website affiliated to the Computer Research Center of Islamic Sciences (CRCIS), 1989, Tehran, Islamic Republic of Iran) http://en.islamic-lib.com/View/en/Book/BookView/Image/986

[13]

Sharai Al-Islam Fi Masail al-Halal wal-Haram By Al-Muhaqqiq al-Hilli, Tr. Hasan M. Najafi, Ansariyan pub., Qum, Islamic Republic Of Iran, edn 1, 2003, V2, p278 http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

[14]

Ibid. http://en.islamic-lib.com/View/en/Book/BookView/Image/1003

A Digest Of Mohummudan Law, According to the Tenets of the Twelve Imams, p136, Book l, Chapter IX, subject matter taken from Tahrir al-Ahkam of Allama Hilli https://archive.org/details/dli.csl.7654/page/n140/mode/1up

[15]

Ibid. P136-137

[16]

Ibid. p231-232, Book Ill, Chapter IV, subject matter taken from Tahrir al-Ahkam of Allama Hilli https://archive.org/details/dli.csl.7654/page/n235/mode/1up